

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA :
 :
-v- : CR 00-S-422-S
 :
ERIC ROBERT RUDOLPH, :
Defendant :
 :

GOVERNMENT'S RESPONSE TO DEFENDANT'S TO EXTEND TIME FOR
FILING OF RULE 16(b)(1)(C) SUMMARIES

Comes Now the United States of America by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama and Robert Joe McLean, Assistant United States Attorney and respectfully files this Response to the defendant's Motion to Extend Time for Filing Rule 16(b)(1)(C) Summaries and addresses the requests for additional and new information outlined in and proffered in support of the defendant's Motion. The United States respectfully submits the following:

The defendant requested disclosure of laboratory bench notes of those government witnesses who performed scientific or other laboratory analysis of evidence in this case on April 8, 2004. The United States, in response, agreed to produce most of the information requested and, to date, has done so. In his present Motion, the defendant has pointed to several perceived and/or alleged deficiencies

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in the United States' production of laboratory bench notes, case jackets, work papers and related materials. It must be noted at the outset that the United States is only able to provide those materials that it has in its possession and cannot produce or create documents that simply do not exist. Furthermore, the United States will only produce those materials pertinent to those experts who performed analysis or tests who will testify in this case. The defendant's initial request and the United States' agreement to provide "bench notes" was at all times limited to those testifying witnesses for whom the United States has previously filed summaries pursuant to Rule 16(a)(1)(G). These materials were requested by the defendant to assist in review of the analysis and conclusions reached by government experts who will testify in this case, based on the summaries filed by the United States. Disclosure of the bench notes of non-testifying experts, as the defendant now requests, has nothing to do with the expert testimony the United States will present at trial and is wholly unsupported. The United States declines to provide such materials. The United States is aware of its obligations under Brady and Giglio and will continue to meet those obligations.¹

¹ The defendant incorrectly states in his Motion that the United States represented that there are not bench notes of any non-testifying experts. As outlined above, the United States declines to provide the work papers of non-testifying experts as being irrelevant and outside the scope of the defendant's request and the United States' agreement.

The United States must also note that many of the defendant's requests center around current ASCLD manuals and/or policies. The United States must point out again that the tests performed in this case were performed in 1998 and, as such, the current ASCLD manuals are irrelevant. The United States is presently working to determine if the material from 1998, the relevant time frame, are still in existence.

Lastly, the defendant has now made the new request that the United States provide case jackets, field notes of all agents participating in the searches of the crime scene, the defendant's residence and vehicle as well as any documentation of these agents exposure to EGDN prior to these searches. Contrary to the defendant's claims, this material has not previously been requested by the defendant. While the United States is unaware of the existence of any field notes made by agents contemporaneously with these searches, based on the reasons set forth in the government's Response to Motion for Preservation, *IN CAMERA* Production and/or Discovery of Rough Notes the United States declines to provide the requested materials. The United States is presently attempting to determine the existence of any relevant documentation outlining any exposure these agents may have had to EGDN.

With respect to the other areas of alleged deficiencies in the government's production of bench notes, the United States is presently working to address the

defendant's requests and will endeavor to determine whether any of the materials sought exist and, if so, provide the requested materials as soon as possible. The United States will provide the defendant with a detailed reply regarding the status of production of these materials.

Respectfully submitted this the 20th day of September, 2004.

ALICE H. MARTIN
United States Attorney



ROBERT JOE MCLEAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date by First Class, United States mail, postage prepaid, to his attorneys of record, Judy Clarke, Attorney at Law, Vintage Building, 310 Richard Arrington Jr. Blvd., 2nd Floor 35203; and Mr. William Bowen, White, Dunn & Booker, 2025 3rd Avenue North, Suite 600, Birmingham, Alabama 35203.



ROBERT JOE MCLEAN
Assistant United States Attorney